

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS LEROY HALE,

Defendant-Appellant.

UNPUBLISHED

January 22, 2004

No. 242273

Antrim Circuit Court

LC No. 00-003369-FH

Before: O’Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his March 18, 2002, sentence of 24 months’ to 36 months’ imprisonment, imposed for his plea based conviction for desertion/abandonment/nonsupport (hereinafter “felony desertion”), MCL 750.161. We affirm.

The charges brought against defendant stem from his failure to support his minor child, born on December 13, 1987. In June 1994, defendant was charged with failure to support his child as required by court order, MCL 750.165, and felony desertion. After being extradited back to Michigan from Florida in early 2000, defendant pleaded guilty to a charge of felony desertion. The trial court placed defendant on delayed sentence status for one year. When defendant failed to abide by the conditions of his delayed sentencing, he was extradited back from Texas, and sentenced to two to three years’ imprisonment.¹

During defendant’s March 2002 sentencing hearing, the prosecution requested that defendant be sentenced for violating probation. Defendant, however, was not placed on probation in March 2000. Rather, his sentence was delayed in order to give him the opportunity to show he was eligible for probation. MCL 771.1(2). Delaying sentence is not the same as placing defendant on probation, even though a court may impose “probation-like conditions” on a defendant. *People v Leonard*, 144 Mich App 492, 495; 375 NW2d 745 (1985). The record clearly indicates that the circuit court consistently treated this matter as one of delayed sentencing for felony desertion.

¹ The court also granted the prosecution’s motion to nolle prosequi the charge based on MCL 750.165.

Defendant argues that the trial court improperly departed from the legislative guideline scoring range of zero to six months.² We conclude that the legislative sentencing guidelines do not apply to this case because the offense for which defendant stands convicted occurred before January 1, 1999. MCL 769.34 (1) & (2). MCL 750.161 is a codification of the common law obligation of a parent to provide the proper shelter, food, care, and clothing for the parent's minor children. See *People v Coleman*, 325 Mich 618, 621; 39 NW2d 201 (1949); *West v West*, 241 Mich 679, 684; 217 NW 924 (1928). The felony desertion statute characterizes the offense as a "continuing offense." MCL 750.161(6). In this case, the duration of the offense ended in January 1997, when defendant's parental rights were terminated and the child was adopted. See *Tilley v Tilley*, 195 Mich App 309, 313; 489 NW2d 185 (1992) ("Absent adoption, the obligation to support a child remains with the natural parents."). Therefore, because the legislative sentencing guidelines do not apply, no guideline departure occurred.

Defendant also argues that the imposition of a prison term instead of a jail term is unwarranted under the circumstances. Again, we disagree. MCL 750.161(1) provides for "imprisonment in a state correctional facility for not less than 1 year and not more than 3 years, or by imprisonment in the county jail for not less than 3 months and not more than 1 year." Because the sentence imposed is within the statutory limits, *People v Shipley*, 256 Mich App 367, 378; 662 NW2d 856 (2003), and because imposition of a prison sentence is expressly provided for in the statute, we will treat defendant's argument as raising the issue of proportionality, i.e., that defendant should have been sentenced to less than one year, and thus imprisoned in the county jail.

In this case, defendant completely failed to address his obligation to support the minor child. When given the opportunity to rectify his failure, defendant failed to secure employment, failed to pay anything toward his support obligation, and left the state without permission. Indeed, defendant had to twice be extradited back to Michigan during the pendency of this matter. Under these circumstances, the court did not abuse its discretion in imposing a term of two to three years, which under the statute, results in confinement in prison instead of jail. See generally *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Finally, defendant has filed a motion to remand under MCR 7.211(C)(1). For the reasons noted above, defendant's motion is denied.

² This argument is predicated on the assumption that the guidelines were scored in this case. However, the record does not contain any indication that a sentencing information report (SIR) was completed; an SIR is not attached to the presentence investigative report (PSIR), nor is one found in the lower court file or noted on the lower court docket. Instead, the matter of a sentencing guideline score apparently stems from a single reference made in the PSIR. Because the judicial sentencing guidelines did not provide for scoring felony desertion, see Michigan Sentencing Guidelines (2d ed, 1988), we proceed on the assumption that this reference is to the legislative guidelines. *People v Compagnari*, 233 Mich App 233, 235; 590 NW2d 302 (1998).

Affirmed.

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder

/s/ Christopher M. Murray